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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,156	03/28/2001	Brian K. Schmidt	0007056-0059/P5319/BBC	6300
7590	06/22/2004			EXAMINER
BRIAN M. BERLINER, ESQ. O'MELVENY & MYERS LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			BROSS, EDWARD J	
			ART UNIT	PAPER NUMBER
			2126	
			DATE MAILED: 06/22/2004	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/822,156	SCHMIDT, BRIAN K. 	
	Examiner	Art Unit	
	Edward Bross	2126	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. Claims 1-24 are pending in this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims language is not clear for the following reasons:

- a. Claim 1 lines 6, 7 and 9; claim 9 lines 4 and 5; claim 17 lines 9, 11, 13 and 14 – “said capsule” should specifically read “said compute capsule”.
 - b. Claim 1 lines 5, 7 and 10; claim 9 lines 6-8; claim 17 lines 9-11 and 15 – “said processes” should specifically read “said interconnected processes”.
 - c. Claim 1 line 9; claim 17 lines 12-13 – It is unclear what is meant by “determining a state of said capsule”.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-8 are directed towards “a method” whereas

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they should be directed towards "a method in a computer system". Claims 9-16 are directed towards "a cache" whereas they should be directed towards "a computer system comprising a cache".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrimpf ("Migration of Processes, Files, and Virtual Devices in the MDX Operating System", pages 70-81, 1995).

7. As to claims 1, 9 and 17 Schrimpf discloses a method for caching an active computing environment comprising:

determining a state of said capsule (e.g. p. 77, section 5.3 first paragraph); and
caching said processes and said state (e.g. p. 77 section 5.3)

8. Schrimpf does not disclose
encapsulating a plurality of interconnected processes into a compute capsule for representing said active computing environment;
encapsulating a system environment interconnected with said processes into said capsule;

obtaining said processes in said capsule;

However, obtaining desired information from a system to store in a single structure is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to store data regarding the state of the processes and environment of Schrimpf in a capsule in order to simplify the access to and management of this data.

9. As to claims 2, 10 and 18, Schrimpf discloses relocating said active computing environment to a new location (e.g. p. 76, section 5.1 and p. 77 section 5.3).

10. As to claims 3, 11 and 19, Schrimpf discloses halting said active computing environment and re-starting said active computing environment in said new location using said state. (e.g. p 76 section 5.1 and p. 77 section 5.3).

11. As to claims 4, 12 and 20, Schrimpf discloses that the said state comprises and inter-process communication (IPC) state (e.g. p. 77 last paragraph).

12. As to claim 5, 13 and 21, Schrimpf discloses that the said state comprises a virtual memory state (e.g. p. 77 section 5.3)

13. As to claims 6, 14 and 22 Schrimpf discloses that the said state comprises a device state (e.g. p. 77 section 5.3).

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14. As to claims 7, 15 and 23, Schrimpf discloses that the said state comprises a file system state (e.g. p. 77 section 5.3).

15. As to claims 8, 16 and 24, Schrimpf discloses that the said state comprises a central processing unit state (e.g. p. 77 section 5.3).

Response to Arguments

16. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Bross whose telephone number is 305-8754. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on 305-9678. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MENG-AL T. AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100